

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

JENNIFER H.,

Claimant,

v.

EASTERN LOS ANGELES REGIONAL  
CENTER,

Service Agency

OAH Nos. 2011071024

A Proceeding Under the  
Lanterman Developmental Disabilities  
Services Act

**DECISION**

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, in a consolidated hearing in Alhambra on September 1, 2011. Eastern Los Angeles Regional Center (Service Agency) was represented by Carmen Castro Luna, Supervisor of Family Services and Supports. Claimant Jennifer H. was represented by her father who was provided with the services of a Vietnamese interpreter.

The Service Agency presented Exhibits 1–12 and the argument of the Family Services and Supports supervisor. Claimant presented the testimony and argument of the father. The Service Agency's exhibits were admitted into evidence.

Oral and documentary evidence having been received and argument heard, the Administrative Law Judge submitted this matter for decision on September 1, 2011, and finds as follows:

**ISSUE**

The issue presented for decision is whether claimant should receive more than 252 hours of in-home respite in lieu of out-of-home respite for the month of August 2011.

## FACTUAL FINDINGS

1. Claimant Jennifer H. was born on September 6, 2003, and is eight years old. She has been diagnosed with Autistic Disorder. Based on her diagnosis and developmental delays and/or disabilities, claimant is eligible for and receives regional center services from the Service Agency, including respite, social emotional developmental intervention programming to improve her social and play skills, and Discrete Trial Training or intensive behavioral treatment services. Her behavioral consultant works with claimant on her play, interaction, self-help, and communication skills. Claimant receives special education services and supports from her Monterey Park elementary school, including speech and language therapy and adaptive physical education. She receives Supplemental Security Income that helps pay for her daily living expenses and basic needs.

2. Claimant lives with her parents and three siblings in Alhambra. Her twin brother and younger brother are also consumers of the Service Agency. Her parents are unemployed and spend much of their time and energy caring for claimant and their three children and supervising their development and regional center and school activities. Claimant is in good health and does not have any behavioral problems. However, she has no friends or an awareness of dangers. She must be supervised when she is out in the community for her own safety. Claimant is calm and cooperative and enjoys leisure and recreational activities with her family and in the community.

3. For the past few years or so, claimant's mother has taken three weeks every August to visit her elderly parents who live in Ho Chi Minh City in Vietnam. While the mother is overseas visiting her parents, claimant's father stays home with claimant and their three other children. The parents have decided that summertime or August is the best time for the mother to visit her parents in Vietnam because the children are on summer vacation and not attending school. The parents have found that, during the regular school year, their children are very busy with school work and both of them have to be at home to help their children and supervise their various activities and schedules.

4. In past years, when claimant's mother has gone to Vietnam, the Service Agency has provided the family with in-home respite in lieu of out-of-home respite. Out-of-home respite (OHR) services, as defined by the Service Agency's Purchase of Service Guideline, are intermittent or regularly scheduled temporary care provided outside the consumer's home by a vendored service provider. OHR is intended to assist the family in securing temporary outside support in providing appropriate care and supervision of the consumer.

5. Under her Individual Program Plan (IPP) dated September 27, 2010, the Service Agency is required to provide claimant with 30 hours per month of respite services. Her father is the parent vendor of the respite services and is responsible for hiring and training respite workers, keeping respite records, withholding income taxes for the respite workers, and following the Service Agency's vouchered respite regulations. Although the IPP does not contain any reference to the provision of OHR or in-home respite in lieu of OHR, the Service Agency has allowed claimant to use in-home respite in lieu of OHR.

6. In a Notice of Proposed Action dated July 15, 2011, the Service Agency denied claimant's request for 21 days at 16 hours per day, or 336 hours, of OHR for the period of August 1–21, 2011 while claimant's mother was to be out-of-the-country visiting her parents in Vietnam. Instead, the Service Agency agreed to fund or provide 21 days at 12 hours per day, or 252 hours, of OHR. As reasons for its action, the Service Agency cited claimant's receipt of 32 hours of respite each month, the parents' responsibility to provide care and supervision to a minor under 13 years of age, and the requirement that the Service Agency's consider whether the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities.

7. On July 21, 2011, claimant's father filed a Fair Hearing Request, asking that the Service Agency provide 336 hours of OHR for three weeks in August 2011 while his wife visited Vietnam. In his Fair Hearing Request and in the hearing in this matter, claimant's father contended that, two years ago, the family received 336 hours of OHR in the summer when his wife left the country. He asserted that the reduction of the OHR hours was a mistake. He testified that 252 hours of OHR are not sufficient because he has four children, three of whom are developmentally disabled, the children argue with each other frequently, and he needs help in the home while his wife is gone. This summer, his wife went to Vietnam for three or four weeks in August 2011 and returned on August 26, 2011.

8. On March 22, 2011, in OAH Case No. 2010090530, claimant's request and appeal to receive 336 hours of OHR for August 2010 was denied on the grounds that the father had signed an agreement with the Service Agency that his family would receive 300 hours of OHR. In addition, it was determined that claimant's father failed to establish a need or justification for the additional 36 hours of OHR.

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Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

## LEGAL CONCLUSIONS

1. Grounds exist under the Lanterman Developmental Disabilities Services Act to grant claimant's request for more OHR, based on Findings 1–8 above.

Under the Lanterman Act, the Legislature has decreed that persons with developmental disabilities have a right to treatment and rehabilitative services and supports in the least restrictive environment and provided in the natural community settings as well as the right to choose their own program planning and implementation. (Welf. & Inst. Code, § 4502.)<sup>1</sup>

Services and supports for persons with developmental disabilities means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability or toward the achievement and maintenance of independent, productive, normal lives. (§ 4512, subd. (b).) Services and supports may include physical and occupational therapy, recreation, behavior training, community integration services, daily living skills training, and social skills training. (*Ibid.*)

The Legislature has further declared regional centers are to provide or secure family supports that, in part, respect and support the decision making authority of the family, are flexible and creative in meeting the unique and individual needs of the families as they evolve over time, and build on family strengths and natural supports. (§ 4685, subd. (b).) Services by regional centers must be provided in the most cost-effective and beneficial manner. (§§ 4685, subd. (c)(3), and 4848, subd. (a)(11)) and must be individually tailored to the consumer (§ 4648, subd. (a)(2)).

Further, section 4648, subdivision (a)(8), provides that regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving funds to provide those services. Section 4659, subdivision (a)(1), directs regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services.

Effective on September 1, 2008, section 4646.4, subdivision (a), requires regional centers, when purchasing services and supports, to ensure conformance with purchase of service policies and to utilize generic services and supports when appropriate. Regional centers are required to take into account the consumer's need for extraordinary care, services, and supports and supervision. Services and supports

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<sup>1</sup> Further section references are to the Welfare and Institutions Code unless indicated otherwise.

for persons with developmental disabilities includes respite which may be included in a consumer's IPP. (§ 4512, subd. (b).)

In-home respite services are intermittent or regularly scheduled temporary non-medical care and supervision provided for a regional center client in his or her own home and who resides with a family member. (§ 4690.2, subd. (a).) Respite care is designed to assist family members in maintaining the client at home, provide appropriate care and supervision to ensure the client's safety in the absence of family members, relieve family members from the constantly demanding responsibility of caring for the client, and attend to the client's basic self-help needs and other activities of daily living, including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by family members. (§ 4690.2, subd. (a)(1 - 4).)

Effective July 1, 2009, a regional center may only purchase respite services when the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities. (§ 4686.5, subd. (a)(1).) A regional center shall not purchase more than 21 days of out-of-home respite services in a fiscal year for a consumer. (§ 4686.5, subd. (a)(2).) A regional center may grant an exemption to this limit of 21 days if it is demonstrated that the intensity of the consumer's care and supervision needs are such that additional respite is necessary to maintain the consumer in the family home or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer (§ 4686.5, subd. (a)(3).)

Under the Service Agency's Purchase of Service (POS) Guideline for Out-of-Home Respite Services, dated May 2, 2011, a consumer who resides with a family member is eligible for OHR when the occasional needs of the consumer and/or family are more than the support of friends and natural and community supports can provide and may be used as a support option should family members have planned activities such as a vacation. OHR may be provided to a consumer and the family when the care and supervision needs of the consumer exceed that of an individual of the same age without developmental disabilities. In-home respite in lieu of OHR may be used only when there is no out-of-home respite arrangement available.

The POS Guideline further provides that the Service Agency may not purchase more than 21 days of OHR in a fiscal year. The Service Agency may grant an exemption to this limit if it is demonstrated that the intensity of the consumer's care and supervision needs are such that additional respite is necessary to maintain the consumer in the family home or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer. Within the limit of 21 days, the daily amount of OHR is calculated on individual needs and cannot exceed 16 hours per day. Hours are calculated by taking into account the amount of time that the consumer attends school or day programs during the day, after school care, social and recreational programs, and hours of sleep, for

respite hours cannot be provided during these times. The effectiveness of OHR is to be determined by feedback from the family or the consumer and an assessment of the progress towards meeting objectives of the consumer's IPP. OHR is a service that must be included in a consumer's IPP.

Because claimant has been receiving in-home respite in lieu OHR from the Service Agency and the Service Agency has proposed to provide her such OHR again this year, claimant is deemed eligible for OHR under the Lanterman Act and the Service Agency's Purchase of Service Guideline. Two or three years ago, claimant and her family received 336 hours of OHR when her mother was out of the country for approximately three weeks in the summer. Last year, the Service Agency provided 300 hours of OHR pursuant to an agreement with claimant's father which agreement was affirmed in a Decision in Case No. 2010090530. This year, on July 15, 2011, the Service Agency denied the funding 336 hours and agreed to provide 252 hours of OHR. Because it has determined to reduce or change the number of OHR hours from 300 to 252 hours without the consent of claimant, the Service Agency bears the burden of showing that its action was appropriate under the circumstances. Claimant bears the burden of showing that she is entitled to receive the maximum allowable amount of 336 hours, or 21 days at 16 hours per day, of OHR.

Here, the Service Agency has not met its burden of proof. The Service Agency did not show as required by its Purchase of Service Guideline for OHR Services that it calculated what should be the appropriate number of daily hours of OHR based on the individual need of the consumer or by taking into account the amount of time that claimant attends school or a day program, after-school care, social and recreational program, and hours of sleep. The Service Agency, in fact, presented no evidence of such calculation. The Service Agency argued that perhaps the mother should visit her parents in Vietnam during another part of the year when the children were in school. However, claimant's father explained that summertime, and specifically August, was a better time because the children were less busy with their school work and services. The fact that claimant and her siblings are not in school in August due to summer break has a tendency in reason to show that claimant's father would need more OHR hours to provide care and supervision for claimant and her three siblings while the mother was out of the country. On the other hand, claimant's father has failed to demonstrate that claimant and his family needs the full allotment of 336 hours of OHR due to the activities and time demands of his children. Because he is unemployed, claimant's father is expected to care and supervise his children along with the respite worker or workers that he would hire with the OHR hours. Claimant's OHR hours will not be reduced from the current level of 300 hours.

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Wherefore, the Administrative Law Judge makes the following Order:

### ORDER

The appeal of claimant Jennifer H. of the determination of the Eastern Los Angeles Regional Center to reduce her in-home respite in lieu of out-of-home respite to 252 hours is granted, in part, and the proposed action of the Eastern Los Angeles Regional Center to reduce the in-home respite in lieu of out-of-home respite is overruled. Eastern Los Angeles Regional Center shall provide claimant and her family with 300 hours of OHR for the month of August 2011 provided claimant submits documentary proof that her mother traveled out of the country for 21 days that month.

Dated: September 9, 2011

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Vincent Nafarrete  
Administrative Law Judge  
Office of Administrative Hearings

### NOTICE

**This is the final administrative decision and both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**